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There Are Now 60 Cases

When Officials Are Sued, Who Should Defend Them?

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WASHINGTON—John N. Mitchell, the former Attorney General, and 60 other present or former public officials are now being sued in civil courts by thousands of private citizens who believe they were subjected to improper surveillance by their Government, and their cases may soon become the subject of a major Congressional debate.

Whether the Government should defend its servants, how the defense should proceed and who—the Government or the defendants—should pay any damages that might be awarded, are all matters a Senate-House conference committee may be considering next month. Three weeks ago, the House refused the Justice Department \$4.8 million it said it needed for outside legal fees. Last week, a Senate committee voted to restore it, but on one condition: The Attorney General cannot proceed with any new defenses by private counsel without first getting the approval of the Congressional judiciary committees.

In the past, Government policy has been that it will defend officials for actions taken within what it calls the outer parameters of their official duties, so long as it believes the actions were legal. (It will not, however, defend officials in Federal Criminal cases or in civil suits arising from actions for which the officials have been indicted or are under criminal investigation.)

The civil division of the Department of Justice has been charged with determining which of the officials were acting "properly." Already the department has paid nearly \$800,000 to private attorneys to defend 45 present and former officials in 10 suits. The supplemental appropriation was requested to pay legal bills in the fiscal year that begins Oct. 1. Irving Jaffe, second-in-command at the civil division, has refused to make public how the public's money has been spent so far, on the ground that the disclosure might be a violation of the lawyer-client relationship.

An Intelligence Who's Who

The list of defendants in the growing number of suits reads like a Who's Who of the intelligence establishment of the Nixon and Johnson Administrations. It includes former Central Intelligence directors William E. Colby, James R. Schlesinger, John A. McCone and Richard Helms, who like Mr. Mitchell has still other legal problems. Mr. Helms is the target of a Federal grand jury investigation for possible perjury.

Because some of the litigation involves class action suits, there are scores, even thousands, of plaintiffs. They include the well-known, such as Jane Fonda, the actress, who is charging that the Federal Bureau of Investigation improperly inspected her bank records, buglarized her car and conducted extensive surveillance to try to destroy her credibility as an antiwar activist, to the relatively anonymous, such as Rodney Driver, a mathematics professor at the University of Rhode Island, who is charging that the Central Intelligence Agency improperly opened his mail. The damages that have been claimed come to millions, and conceivably millions could be awarded.

In the most publicized of the civil suits so far, brought by Morton H. Halperin, once a member of Henry A. Kissinger's National Security Council staff, a Federal judge has ordered Mr. Mitchell, former President Nixon and his chief of staff, H. R. Haldeman, to pay an as yet undetermined amount. Mr. Halperin's home telephone had been tapped for 21 months at White House orders. What Mr. Halperin is asking for is \$100 a day from each of three men for each day the wiretap was in place and for each member of his family.

According to Jack D. Novik, an American Civil Liberties Union attorney who is representing some of the plaintiffs, at least three factors have contributed to the recent increase in suits: disclosures by the Congressional intelligence committees of the extent of Government spying; the passage of the Freedom of Information Act, which gave citizens greater access to Government files; and a 1971 United States Supreme Court decision that made it easier to sue Federal officials.

The High Court held that, even though there was no law specifically permitting citizens to sue Federal officials, such suits could be brought directly under the Constitution if there was a legitimate issue of violation of constitutional rights. "This meant we could bring these cases directly under the Fourth Amendment," Mr. Novik said, "and this made it much easier to sue."

The standard argument for defending public officials at the public expense has been that to leave them to fend for themselves would mean that the Federal bureaucracy would be too timid to act at all. But the Government does not defend all officials at all times. In Mr. Mitchell's case, for example, it has been paying legal expenses in three of the 26 suits in which he has been named.

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